

UNITED STATES

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FOREIGN INTELLIGENCE SURVEILLANCE COURT

LEEANN FLYNN HALL  
CLERK OF COURT

WASHINGTON, D.C.

IN RE ORDERS ISSUED BY THIS COURT )  
INTERPRETING SECTION 215 OF THE )  
PATRIOT ACT )  
\_\_\_\_\_ )

Docket No.: Misc. 13-02

**SUBMISSION OF THE UNITED STATES IN RESPONSE TO THE  
COURT'S SEPTEMBER 13, 2013 OPINION AND ORDER AND MOTION FOR  
STAY OF FURTHER PROCEEDINGS DUE TO LAPSED APPROPRIATIONS**

In its September 13, 2013 Opinion and Order, the Court directed the United States to identify those opinions of this Court that evaluate the meaning, scope, and constitutionality of Section 215 of the Patriot Act, 50 U.S.C. § 1861, that are at issue in ongoing Freedom of Information Act ("FOIA") litigation in the U.S. District Court for the Southern District of New York. Opinion and Order, at 1, 18. The Court also directed the United States to identify any such opinions that are not at issue in the FOIA litigation or already subject to the Court's publication process pursuant to Rule 62(a) of the Court's Rules of Procedure, and to propose a timetable to complete declassification review of any such opinions. Opinion and Order, at 18.

After a review of this Court's opinions and orders, the Government has determined that eight of these documents contain analysis by the Court evaluating the meaning, scope, and/or constitutionality of Section 215. Six of these documents are currently at issue in the FOIA litigation in the Southern District of New York. They are:

- (1) the Court's February 24, 2006 Opinion, PR-BR 06-24 and PR-BR 06-26;<sup>1</sup>
- (2) the Court's August 20, 2008 Supplemental Opinion, BR 08-07;
- (3) the Court's December 12, 2008 Supplemental Opinion, BR 08-13;
- (4) the Court's March 2, 2009 Order, BR 08-13;
- (5) the Court's November 5, 2009 Supplemental Opinion and Order, BR 09-15; and
- (6) the Court's November 23, 2010 Supplemental Order, BR 10-82.

One additional Section 215 opinion of the Court (dated August 29, 2013) was, at the time of this Court's Opinion and Order of September 13, 2013, subject to the Rule 62(a) process, and it was publicly released by the Court (with redactions) on September 17, 2013. *See* BR 13-109.

There is one remaining document that contains analysis by this Court evaluating the meaning, scope, and/or constitutionality of Section 215: this Court's Opinion of February 19, 2013 in case BR 13-25. Because of the current lapse of appropriations authority, the Government cannot presently estimate the date by which it will be able to complete a declassification review of this opinion. The Government anticipates, however, that it will complete its review within approximately 21 days of the resumption of appropriations at the relevant agencies.

In light of the aforementioned lapse in appropriations, the Government respectfully requests that the Court stay any further proceedings in this case until after appropriations are restored. In support of its motion for a stay, the Government states the following:

1. At the end of the day on September 30, 2013, the appropriations act that had been funding the Department of Justice expired and annual appropriations to the Department of

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<sup>1</sup> Although the February 24, 2006 Opinion is not within the timeframe of the American Civil Liberties Union's ("ACLU") FOIA request, the Government has previously notified the ACLU that it is reviewing and processing this Opinion as part of that litigation and that the ACLU will be provided with copies of any non-exempt portions.

Justice lapsed. The Department of Justice does not know when funding will be restored by Congress.

2. Absent an appropriation, Department of Justice attorneys and employees are prohibited from working, even on a voluntary basis, except in very limited circumstances, including “emergencies involving the safety of human life or the protection of property,” 31 U.S.C. § 1342.

3. There are no pending deadlines in this matter. The Government intends to notify the Court once appropriation authority has been restored.

October 4, 2013

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the Submission of the United States in Response to the Court's September 13, 2013 Opinion and Order and Motion for Stay of Further Proceedings Due to Lapsed Appropriations was served by the Government via Federal Express overnight delivery addressed to:

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